

B & M Electric Company and International Brotherhood of Electrical Workers, AFL-CIO, Local Union 934. Case 10-CA-25471

January 28, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on August 2, 1991,¹ the General Counsel of the National Labor Relations Board issued a complaint on September 23 against B & M Electric Company, the Respondent. Upon the filing of an amended charge on September 27, the General Counsel issued an amended complaint on October 18, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, complaint, and amended charge and complaint, the Respondent has failed to file an answer.

On November 21, 1991, the General Counsel, by counsel, filed a Motion for Summary Judgment. On November 22, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the amended complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney for Region 10 of the Board, by letter dated October 16, 1991, informed the Respondent of the requirement to file an answer to the complaint. The regional attorney also informed the Respondent, by letter dated November 6, of the requirement to file an answer to the amended complaint and that counsel for the General Counsel intended to move for summary judgment if the Respondent's answer was not filed by November 13, 1991. The Respond-

ent has not filed an answer to the complaint or to the amended complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

B & M Electrical Company, the Respondent, is and has been at all times material, a partnership, with an office and place of business located at Kingsport, Tennessee, where it is engaged in electrical contracting. The Respondent, during the past calendar year, which period is representative of all times material, purchased and received at its Kingsport, Tennessee facility materials and supplies valued in excess of \$50,000 directly from suppliers located outside the State of Tennessee. We find that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Charging Party is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

At all times material, the Union and East Tennessee Chapter, Tri-Cities Division, N.E.C.A. (NECA) have been parties to successive collective-bargaining agreements, the latest of which is effective June 1, 1991, through May 31, 1994, and its predecessor collective-bargaining agreement was effective from June 1, 1988, through May 31, 1991.

Since about February 5, 1990, the Respondent has been, and is, a party to the collective-bargaining agreement described above.

The employees described in the collective-bargaining agreement constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all times since about February 5, 1990, the Union has been, and is, the exclusive collective-bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment of all employees of the Respondent in the unit.

Since about February 2, 1991, and at all times thereafter, the Respondent has failed and refused to make payments, required by the collective-bargaining agreements, to the apprenticeship fund, the national electric benefit fund, the southern electric health and welfare fund, and the southern electric

¹ All dates are 1991 unless otherwise noted.

retirement fund, and to pay working assessments. The acts of the Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent violated Section 8(a)(5) of the Act by failing to make payment to the fringe benefit funds, and the apprenticeship fund, and to pay working assessments. We shall order that the Respondent make the fringe benefit contributions and make payments to the apprenticeship fund as required by the collective-bargaining agreements with any additional amounts computed as provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse its employees for any expenses ensuing from its unlawful failure to pay such amounts, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, the Respondent shall pay to the Union working assessments as required by the collective-bargaining agreements, with interest as provided in *New Horizons*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, B & M Electric Company, Kingsport, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make contractually required fringe benefit contributions, payments to the apprenticeship fund, and payments of working assessments.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the apprenticeship fund and the fringe benefit funds whole and make the contractually required benefit contributions and payments to the apprenticeship fund as set forth in the remedy section of this decision and make the contractually required payments of working assessments.

(b) Make whole the unit employees for any loss of benefits they may have suffered from the Respondent's failure to make fringe benefit contributions in the manner set forth in the remedy section of this decision. The appropriate unit is:

The Respondent's employees in the unit described in the collective-bargaining agreements between the International Brotherhood of Electrical Workers, AFL-CIO, Local Union 934 and East Tennessee Chapter, Tri-Cities Division, N.E.C.A., effective from June 1, 1988, through May 31, 1991, and effective from June 1, 1991, through May 31, 1994.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payments records, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Kingsport, Tennessee, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to make contractually required fringe benefit contributions, payments to the apprenticeship fund, and payments of contractually required working assessments.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make payment of contractually required working assessments.

WE WILL make whole our employees in the unit by making all contractually required fringe benefit contributions and payments to the apprenticeship fund that have not been paid, and by reimbursing our employees in the unit for any expenses, plus interest, ensuing from our failure to make the con-

tractually required payments. The appropriate unit is:

Our employees in the unit described in the collective-bargaining agreements between the International Brotherhood of Electrical Workers, AFL-CIO, Local Union 934 and East Tennessee Chapter, Tri-Cities Division, N.E.C.A., effective from June 1, 1988, through May 31, 1991, and effective from June 1, 1991, through May 31, 1994.

B & M ELECTRICAL COMPANY